



Respondent said "he had just gotten divorced and consequently had a nervous breakdown."<sup>3</sup> He was cooperative with staff throughout that first admission.<sup>4</sup>

At discharge, his treating psychiatrist wrote his prognosis was "somewhat guarded depending upon the type of follow-up treatment patient will receive in dealing with his recent divorce."<sup>5</sup>

After being cooperative the first two admissions, Respondent decided the drugs API administered were not helping, at which point API locked him up and drugged him against his will despite acknowledging that they weren't working.

"The medication seemed not to have noticeable favorable effects throughout the first several hospital weeks, despite the fact that there were a variety of unpleasant Extra Pyramidal Symptoms."<sup>6</sup>

The dose he was given is 12 times the recommended dose today and worsened his mental health as described by Grace E. Jackson, who was qualified as an expert in psychopharmacology in Respondent's Case No. 3AN 08-493PR,<sup>7</sup> which is now on appeal in S-13116.

A. . . . I just about fell out of the chair when I saw what had happened. I think at one point he was receiving 60, that's 60, 20 milligrams of Haldol three times a day is I think what I read in the record. The dose of Haldol that is now recognized as, quote, blocking enough dopamine receptors to produce antipsychotic effects, meaning the dose that would typically be thought to be helpful, is 5 milligrams. He was receiving 60 milligrams. So he was receiving a dose that was guaranteed to actually cause Parkinson's disease, and that dose has been shown. . . . I looked at

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<sup>3</sup> Exc. 57.

<sup>4</sup> Exc. 61.

<sup>5</sup> Exc. 64.

<sup>6</sup> Exc. 65-68.

<sup>7</sup> Tr. 111 (May 14, 2008).

the doses. And in my opinion, that was really the beginning of, you know, a long demise.

Q Did -- do you recall if those records indicated that Mr. Bigley's symptoms continued in spite of doses that induced Parkinsonism?

A . . . [W]ell, I know it did, because the doctors themselves were surprised, which made me appreciate the fact that I was reading a record from 1980 and another record from 1981. Backing up 27 years ago, 28 years ago, the doctors apparently had been trained in this -- still in the philosophy of care that you administer until you get these side effects. And once you see those side effects, you know the psychosis will be eradicated. And so when the doctor wrote the note, his delusions continue in their severity and same intensity despite the fact he now has Parkinson side effects, I'm reading to myself, oh, this is fascinating. This is what they used to teach doctors is that they had to give doses to produce Parkinson's in order to heal the psychosis. But of course, they eventually learned that that did not heal the psychosis. In fact, for many people, including Mr. Bigley, it seemed to make things worse.

Q So is that -- does Risperdal cause psychosis in some people?

A Sure. All of these medications cause psychosis in people. Because of the fact that as you damage the brain and you leave unresolved the initial cause of a person's psychosis, you are really not treating the initial problems.<sup>8</sup>

The Discharge Summary of this admission also states:

On 3/26/81, a judicial hearing determined that there would be granted a 30 day extension during which time treatment efforts would continue, following which there would be a further hearing concerning the possibility of judicial commitment. Mr. Bigley was furiously angry that he was deprived of his right to freedom outside the hospital, but despite his persistent anger and occasional verbal threats, he never became physically assaultive, nor did he abuse limited privileges away from the locked unit.

After the first six hospital weeks he continued to believe that he had some special mission involving Easter Island - drug addicts and alien visitors to the Earth. When these views were gently challenged he became

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<sup>8</sup> Tr. 144 (May 14, 2008).

extremely angry, usually walking away from whoever questioned his obviously disordered thoughts.<sup>9</sup>

By March 3, 1993, Respondent had had 10 admissions to API and a currently unknown number of admissions in Sitka. According to case management Respondent ceased taking Clozaril because its unwanted side effects were too unpleasant to warrant his continuing to take it.<sup>10</sup> While committed at Mt. Edgecumbe he began to withhold consent to medication.<sup>11</sup>

### **(B)1996-2004 Conservatorship and Guardianship Proceedings**

Sometime in 1996 the Office of Public Advocacy (OPA) was appointed Respondent's conservator.<sup>12</sup>

On April 14, 2004, API filed a petition for temporary and permanent guardianship, alleging in part:

[Respondent's] admissions are becoming more frequent with shorter stays outside the hospital. [Respondent's] delusional and grandiose thought disorder now involves calling Federal Bureau of Investigations, Senator Ted Stevens office and tying up telephone lines of Anchorage Police Department 911, which resulted in charges of illegal telephone use. [Respondent] was found incompetent to stand trial due to the severity of his regressed mental status. . . . [Respondent] is con-compliance with anti-psychotic medications and his actions have become more aggressive in nature. He is at risk of loosing his independent housing.<sup>13</sup>

The Visitor's Report of May 25, 2004 with respect to the guardianship states:

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<sup>9</sup> Exc. 67.

<sup>10</sup> Appendix 1.

<sup>11</sup> Appendix 2.

<sup>12</sup> Appendix 11.

<sup>13</sup> Appendix 6.

[W]hen hospitalized and on medications, [Respondent's] behaviors don't appear to change much . . . Hospitalization and psychotropic medication have not helped stabilize him.<sup>14</sup>

On June 30, 2004, OPA was appointed Respondent's temporary full guardian.<sup>15</sup>

During Respondent's API admission starting November 23, 2004, Steve Young, Respondent's guardian at the time, informed API he believed that forced drugging compliance was necessary upon discharge while Respondent was living in the community.<sup>16</sup>

On December 26, 2004, permanent full guardianship was granted.<sup>17</sup>

**(C) More Recent Involuntary Commitment, Forced Drugging, and Misdemeanor Proceedings**

**April 12, 2005 to January 27, 2006; In the Community.** On April 12, 2005 Respondent was discharged from API, and lived in the community, voluntarily coming to API to receive long-acting, intra-muscular (IM) injections of Risperdal Consta (risperidone), until January 4, 2006 when he was arrested for trespass and taken to API for an evaluation.<sup>18</sup>

**September 1, 2006 to January 3, 2007; 3AN 06-1039PR.** On September 1, 2006,<sup>19</sup> Respondent's guardian at that time, Steve Young, of the Office of Public Advocacy (OPA), filed an *Ex Parte* Petition for 30 day commitment against Respondent

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<sup>14</sup> Appendix 12.

<sup>15</sup> Appendix 15.

<sup>16</sup> Appendix 22.

<sup>17</sup> Appendix 26. OPA will hereinafter be referred to as Guardian when acting in that capacity.

<sup>18</sup> Appendix 33.

<sup>19</sup> It appears there was also an intervening admission.

for "accosting" OPA staff, using threats and profanity at OPA's office and because he should be forced to take psychiatric drugs,<sup>20</sup> which was granted that same day.<sup>21</sup>

Represented by the Alaska Public Defender Agency, Respondent was involuntarily committed as a matter course.<sup>22</sup>

Respondent continued to voluntarily take the Risperdal Consta while at API, but withheld informed consent to the addition of a second neuroleptic, Seroquel (quetiapine) and anti-seizure medication, Depakote (divalproex ).<sup>23</sup>

In order to force Respondent to take the drugs without having to keep him in API, Respondent's guardian, Steve Young, and API worked out a plan to keep Respondent continuously committed, drug him against his wishes with the long-acting Risperdal and the shorter acting Seroquel and Depakote, discharge him on an "Early Release" under AS 47.30.795, and then get the Court to order him back in to API to drug him against his will again when he predictably ceased taking the drugs.<sup>24</sup>

On October 4, 2006, API signed a petition for 90-Day commitment petition, which among other things said commitment was justified because Respondent was "not responding to Risperdal alone."<sup>25</sup> API also filed a forced drugging petition stating

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<sup>20</sup> Appendix 34.

<sup>21</sup> Judicial Not. Apdx 1.

<sup>22</sup> Jud. Not. Apdx. 1.

<sup>23</sup> Appendix 42.

<sup>24</sup> See, e.g. Appendix 24.

<sup>25</sup> Jud. Not. Apdx. 3.

Respondent "has refused mood stabilizer medication or second antipsychotic."<sup>26</sup>

Respondent was represented by the Alaska Public Defender Agency, and the Court granted the 90-day commitment<sup>27</sup> and forced drugging petitions in the ordinary course on or around November 8, 2006.<sup>28</sup>

On December 20, 2006, the Law Project for Psychiatric Rights (PsychRights®) filed an entry of appearance on behalf of Respondent,<sup>29</sup> and, filed elections

(1) for a jury trial,

(2) to have the hearing in a real court room, and

(3) to be free from the effects of medication pursuant to AS 47.30.735(b),

in the event a 180-Day Commitment Petition was filed.<sup>30</sup>

On January 3, 2007, Respondent was discharged "Against Medical Advice." from the 90-Day Commitment.<sup>31</sup>

**Concurrent Guardianship Proceedings.** On December 6, 2006, two weeks before PsychRights's entry of Appearance in 3AN 06-1039PR, it filed an entry of appearance, petition in the guardianship proceeding, Case No. 3AN 04-545 PG, to:

(1) Terminate the Guardianship.

(2) Remove the Guardian and appoint a successor of Respondent's choice.

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<sup>26</sup> Jud. Not. Apdx. 4.

<sup>27</sup> Jud. Not. Apdx. 5.

<sup>28</sup> Appendix 44 and Appendix 46, respectively.

<sup>29</sup> Jud. Not. Apdx. 9.

<sup>30</sup> Jud. Not. Apdx. 10.

<sup>31</sup> Jud. Not. Apdx. 12.

- (3) Amend the powers of the Guardian under the Guardianship Plan to the least restrictive necessary to meet Respondent's essential requirements for physical health and safety.
- (4) Review and reverse the decision of the guardian to consent to the administration of psychotropic medication against the wishes of Respondent.
- (5) Amend the powers of the Guardian to eliminate the authority to consent to mental health treatment.

After numerous proceedings, this resulted in a settlement agreement on July 20, 2007, which (a) established some parameters for the administration of the guardianship and (b) provided Respondent with a clear path towards terminating his guardianship (Guardianship Settlement Agreement).<sup>32</sup> As relevant here, the Guardianship Settlement Agreement provides:

- 4.2. Increase of Discretionary Funds. It is recognized the amounts available for food and spending money (Discretionary Funds) are low and efforts will be made to find housing acceptable to Respondent which will increase the amount of Discretionary Funds. To that end, the Guardian shall make its best efforts to obtain subsidized housing for Respondent that will allow an increase in Respondent's Discretionary Funds. ...
6. Mental Health Services. Respondent has largely been unwilling to accept mental health services. Some services that Respondent may hereafter, from time to time, desire are identified in the subsections that follow. Others may be identified later. To the extent Respondent, from time to time, desires such services, the Guardian and API will support the provision of such services, including taking such steps as may be required of them to facilitate the acquisition thereof to the best of their ability.<sup>33</sup>

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<sup>32</sup> Appendix 58.

<sup>33</sup> Footnote 2 here, states: "By agreeing to this stipulation API is not making any judgment regarding eligibility standards under Medicaid regulations." Appendix 62.

- 6.2. Extended Services. Extended services, such as Case Management, Rehabilitation, Socialization, Chores, etc., beyond the standard limits for such services.
- 6.3. Other Services. Additional "wrap-around" or other types of services Respondent, from time to time, desires.
7. Involuntary Commitment Proceedings. The Guardian will make a good faith effort to (a) avoid filing any initiation of involuntary commitment petitions against Respondent under AS 47.30.700. In making such efforts, the Guardian will explore all available alternatives, including notifying and requesting the assistance of Respondent's counsel herein, James B. Gottstein.
  - 7.2. Unless the Guardian determines it is highly probable that serious illness, injury or death is imminent, in the event the Guardian believes a petition to initiate involuntary commitment might be warranted, rather than the Guardian filing such a petition, the Guardian shall relay its concerns to another appropriate party for evaluation. Without in any way limiting the generality of the foregoing, appropriate parties, might be Respondent's outpatient provider, if any; other people working with him; or other people who know him.
8. Psychotropic Medications. API shall not accept a consent by the Guardian to the administration of psychotropic medication, while Respondent is committed to API, to which Respondent objects.

**February 23 to March 14, 2007; 3AN 07-274PR**. 30-day petitions for commitment and forced drugging were filed on February 23, 2007,<sup>34</sup> Respondent was represented by the Alaska Public Defender Agency, a hearing held before the Probate Master on February 27, 2007, who recommended approval of both petitions, and which were approved by the Superior Court on March 2, 2007.<sup>35</sup> On March 21, 2007, 90-day continuation petitions for involuntary commitment and forced drugging were filed.<sup>36</sup> The

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<sup>34</sup> Jud. Not. Apdx. 13, 17.

<sup>35</sup> Jud. Not. Apdx. 15-19.

<sup>36</sup> Jud. Not. Apdx. 20, 22.

Law Project for Psychiatric Rights represented Respondent in those proceedings,<sup>37</sup> and Respondent demanded a jury trial.<sup>38</sup> The Superior Court ruled Respondent had the right to a jury trial only with respect to the involuntary commitment.<sup>39</sup> Dr. Worrall testified he has treated Respondent off and on since 1984, including the last several admissions,<sup>40</sup> "[h]e has a universal history all the time of stopping his medications when he gets out of the hospital,<sup>41</sup> the drugs have "no effect on" [Respondent's beliefs] . . . the delusions are not going to go away,"<sup>42</sup> and "if it's real cold he knows how to get into jail and get into a warm place."<sup>43</sup> The jury did not find Respondent's mental condition would be improved by the course of treatment, and a verdict entered for Respondent.<sup>44</sup> On March 14, 2007, at discharge from his 68th admission, his treating psychiatrist Dr. Worrall, described Respondent's condition after the maximum benefits from the drugs as "delusional . . . no insight and poor judgment, . . . paranoid and guarded."<sup>45</sup>

**May 14 to June 26, 2007; 3AN 07-598PR.** On May 14, 2007, a thirty-day commitment petition was filed against Respondent, and a forced drugging petition on May 15th in which Respondent was represented by the Alaska Public Defender Agency.

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<sup>37</sup> Jud. Not. Apdx. 23.

<sup>38</sup> Jud. Not. Apdx. 24.

<sup>39</sup> Jud. Not. Apdx. 30.

<sup>40</sup> Jud. Not. Apdx. 35.

<sup>41</sup> Jud. Not. Apdx. 37.

<sup>42</sup> Jud. Not. Apdx. 40.

<sup>43</sup> Jud. Not. Apdx. 43.

<sup>44</sup> Jud. Not. Apdx. 48, 49.

<sup>45</sup> Exc. 71.

Both petitions were granted on May 23, 2007.<sup>46</sup> Ninety-day petitions for commitment and forced drugging were filed against Respondent prior to the expiration of the 30 day commitment, and represented by the Alaska Public Defender Agency at a jury trial held June 26, 2007, the jury found Respondent was not gravely disabled and a verdict entered for Respondent.<sup>47</sup>

**August 29 to September 14, 2007; 3AN 07-1064PR.** On August 29, 2007, Respondent was brought to API pursuant to an *Ex Parte* Order that had not been signed by a Superior Court judge,<sup>48</sup> and on August 30, 2007, a 30-day involuntary commitment petition was filed.<sup>49</sup> On August 31, 2007, the Law Project for Psychiatric Rights filed a limited entry of appearance for the forced drugging only.<sup>50</sup> The hearing on the involuntary commitment petition was held August 31, 2007, at the conclusion of which Master Brown stated he was recommending the petition be granted.<sup>51</sup> Master Brown issued written recommendations on September 4, 2007, which the Superior Court approved the same day.<sup>52</sup>

On September 4, 2007, represented by The Law Project for Psychiatric Rights, Respondent filed a 32 page Pre-Hearing Brief with a 340 page Appendix<sup>53</sup> and the

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<sup>46</sup> Jud. Not. Apdx 50-55.

<sup>47</sup> Exc. 81-83.

<sup>48</sup> Jud. Not. Apdx 56.

<sup>49</sup> Jud. Not. Apdx 57.

<sup>50</sup> Jud. Not. Apdx 60 (without exhibits).

<sup>51</sup> Jud. Not. Apdx. 73

<sup>52</sup> Jud. Not. Apdx 82-83.

<sup>53</sup> Jud. Not. Apdx 84-116, without appendix.

written testimony of Robert Whitaker and Ronald Bassman showing (1) the drugs were not in Respondent's best interests and (2) there are less intrusive alternatives available.<sup>54</sup>

The direct testimony of Dr. William Worrall, the treating physician at API was taken, as well as the direct and cross-examination of Sarah Porter,<sup>55</sup> a New Zealand expert on less intrusive alternatives.<sup>56</sup> Among other things, including that Respondent has Tardive Dyskinesia,<sup>57</sup> Dr. Worrall testified

[T]he federal protective services were at their wits end trying to protect Murkowski's office from him. We're looking at a guy who is going to do time in jail if we don't intervene."<sup>58</sup>

The hearing was continued to September 10, 2007, for Dr. Worrall's cross-examination and further presentation of Respondent's live testimony.<sup>59</sup>

At the September 10, 2007, hearing, API announced it was going to discharge Respondent rather than go forward with the forced drugging petition.<sup>60</sup> Respondent objected that API had some obligation to Respondent upon discharge and that he would like to see some kind of settlement.<sup>61</sup>

On September 12, 2007, Respondent filed a motion for an order in the form of a

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<sup>54</sup> Exc. 135-139, 140-154, respectively. This same written testimony was submitted herein.

<sup>55</sup> Exc. 166-177.

<sup>56</sup> Exc. 174.

<sup>57</sup> Exc. 168.

<sup>58</sup> Jud. Not. Apdx 129.

<sup>59</sup> Exc. 102.

<sup>60</sup> Jud. Not. Apdx. 146.

<sup>61</sup> Jud. Not. Apdx .147.

permanent mandatory injunction requiring API to provide a less intrusive alternative,<sup>62</sup> supporting it with the additional written testimony of Paul Cornils.<sup>63</sup> The key features of the requested less intrusive alternative were reasonable housing, including API as housing of last resort,<sup>64</sup> and having sufficient staff available to be with Respondent for him to be successful in the community.<sup>65</sup>

On September 14, 2007, well before the expiration of the 30-day commitment that had been granted upon API's sworn testimony that Respondent was unable to survive safely in the community<sup>66</sup> and Dr. Worrall's testimony on September 5, 2007 that he was going to do time in jail if API didn't intervene because of his contacts with Senator Murkowski,<sup>67</sup> and before the Superior Court ruled on Respondent's motion for an order requiring API to provide a less intrusive alternative, a key feature of which was to have someone available to be with Respondent to enable him to be successful in the community,<sup>68</sup> API discharged Respondent "against medical advice."<sup>69</sup>

**September 19 to October 12, 2007; USA v. Bigley, 3:07-MH-00192-JDR.** On September 19, 2007, Respondent was arrested for yelling and disturbing employees of Senator Murkowski's Anchorage office, repeated telephone calls, and for leaving 55

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<sup>62</sup> Jud. Not. Apdx. 149.

<sup>63</sup> Exc. 129.

<sup>64</sup> Exc. 132.

<sup>65</sup> Exc. 133.

<sup>66</sup> Jud. Not. Apdx. 68, 70.

<sup>67</sup> Jud. Not. Apdx. 129.

<sup>68</sup> Jud. Not. Apdx. 149.

<sup>69</sup> Exc. 1.

voice mail messages over a 29 day period.<sup>70</sup> On September 20, 2007, Respondent was sent to API to evaluate his competency to stand trial,<sup>71</sup> and on October 12, 2007, pursuant to a motion by the prosecutor, the charges were dismissed and he was ordered released.<sup>72</sup>

**October 21 to October 23, 2007; 3AN 07-11795CR.** On October 21, 2007, Respondent was arrested and charged with trespass and assault-reckless use of force or violence.<sup>73</sup> The charges were dismissed on October 23, 2007.<sup>74</sup>

**October 23, 2007 to January 21, 2008; 3AN 07-1311PR.** That same day, October 23, 2007, while Respondent's counsel was outside of the state,<sup>75</sup> an *Ex Parte* Petition was filed in which it was reported that despite being drugged against his will while in jail, Respondent was extremely delusional, agitated, angry, hostile to staff, yelling obscenities and occasional threats.<sup>76</sup> Respondent was thereupon taken into custody and delivered to API pursuant to a putative *Ex Parte* Order, which was not executed by the Superior Court.<sup>77</sup> API filed petitions for 30-day involuntary commitment and forced drugging on October 25, 2007,<sup>78</sup> a hearing on both petitions held on

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<sup>70</sup> Jud. Not. Apdx 160.

<sup>71</sup> Jud. Not. Apdx 162.

<sup>72</sup> Jud. Not. Apdx 164.

<sup>73</sup> Jud. Not. Apdx 167. In light of the unanimous testimony that Respondent is not known to have ever been violent, the allegation of assault should not be assumed true.

<sup>74</sup> Jud. Not. Apdx 167.

<sup>75</sup> Exc. 30.

<sup>76</sup> Jud. Not. Apdx. 170.

<sup>77</sup> Jud. Not. Apdx. 168.

<sup>78</sup> Jud. Not. Apdx. 172-174.

November 2, 2007, in which the Alaska Public Defender Agency represented Respondent. Both petitions were granted on November 2, 2007.<sup>79</sup>

Respondent was not discharged during the 30-day commitment, and a continuation 90-day petition for involuntary commitment was filed November 29, 2007, a hearing thereon was held December 20, 2007 in which Respondent was represented by the Alaska Public Defender Agency, and a written order for 90-day commitment was issued January 7, 2008.<sup>80</sup> API, in concert with Respondent's public guardian, arranged extra funding for Respondent to stay at an assisted living facility in Houston, Alaska called the "Big Lake Country Club,"<sup>81</sup> and Respondent discharged from API on January 21, 2008 to the Big Lake Country Club.<sup>82</sup>

**February 23 to March 14, 2008; 3AN-08-247PR.** On February 23, 2008, after Respondent quit taking the psychiatric drugs, he left the Country Club, was taken to API by the police, and voluntarily admitted himself.<sup>83</sup> On February 26, 2008, API filed petitions for involuntary commitment and forced drugging because Respondent withheld consent.<sup>84</sup> On March 7, 2008, Respondent's counsel filed a limited entry of appearance to represent Respondent with respect to the forced drugging petition only.<sup>85</sup> The hearing on the 30-day involuntary commitment petition was held March 14, 2008, in which

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<sup>79</sup> Jud. Not. Apdx. 175-178.

<sup>80</sup> Jud. Not. Apdx. 179.

<sup>81</sup> Jud. Not. Apdx. 182.

<sup>82</sup> Jud. Not. Apdx. 183.

<sup>83</sup> Jud. Not. Apdx 196.

<sup>84</sup> Jud. Not. Apdx 196.

<sup>85</sup> Jud. Not. Apdx. 187.

Respondent was represented by the Alaska Public Defender Agency.<sup>86</sup> Superior Court Judge Jack Smith conducted the hearing, found Respondent was not gravely disabled, and denied the petition for 30-day involuntary commitment.<sup>87</sup>

**March 20, 2008 Review Petition in Guardianship Case.** On or around March 20, 2008, Respondent, on his own, filed a Petition for Review of Guardianship/Conservatorship to remove/replace his guardian (Review Petition).<sup>88</sup> A hearing on the Review Petition was set for August 7, 2008, and OPA, which is his guardian, was appointed as Respondent's attorney even though the Law Project for Psychiatric Rights was already representing him in the proceedings.<sup>89</sup>

**April 10 to April 15, 2008 3AN 08-3805CR.** On April 10, 2008, Respondent was arrested for violating conditions of release, trespass and assault (pushing),<sup>90</sup> and he was confined in jail until the charges were dismissed on April 15, 2008.<sup>91</sup>

**April 17 to April 22; 3AN 08-416PR.** On April 17, 2008, API filed petitions for 30-day involuntary commitment and forced drugging.<sup>92</sup> On April 21, 2008, the Law Project for Psychiatric Rights filed a Conditional Limited Entry of Appearance to

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<sup>86</sup> Jud. Not. Apdx 188.

<sup>87</sup> Jud. Not. Apdx 202.

<sup>88</sup> Appendix 118. The date by Respondent's signature is "8/20/2008," but it appears it should have been 3/20/2008, because that was the date it was received and also the date of the order setting a date for a hearing thereon. Appendix 119

<sup>89</sup> *Id.*

<sup>90</sup> Jud. Not. Apdx 205. Based on the testimony in the commitment case that followed, that it was someone else who was doing the pushing and Respondent didn't push back, it seems likely there was no assault by Respondent.

<sup>91</sup> Jud. Not. Apdx 204.

<sup>92</sup> Jud. Not. Apdx 208.

represent Respondent with respect to forced drugging only.<sup>93</sup> The hearing on the involuntary commitment took place the same day, April 21, 2008 before Master Lack, who recommended Respondent be found not gravely disabled.<sup>94</sup> This recommendation was approved by the Superior Court on April 22, 2008, and both petitions for involuntary commitment and forced drugging dismissed.<sup>95</sup>

**April 25 to June 4, 2008; 3AN 08-493 PR.** On April 25, 2008, Respondent was admitted to API upon a "Police Officer Application" or "POA" for trespassing at the First National Bank of Anchorage.<sup>96</sup> The next day, on April 26, 2008, API filed for an *ex parte* order,<sup>97</sup> which was granted the same day by a magistrate,<sup>98</sup> and API and the Public Defender Agency notified that PsychRights was representing Respondent with respect to forced drugging, "unless and until otherwise notified."<sup>99</sup> Another *ex parte* order was signed, this time by the Superior Court on April 28, 2008.<sup>100</sup> That same day API filed for a 30 day commitment,<sup>101</sup> and a forced drugging order.<sup>102</sup>

On April 29, 2008, the Public Defender Agency was appointed counsel for Respondent in the forced drugging proceeding notwithstanding him being represented by

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<sup>93</sup> Jud. Not. Apdx 207, without 90 pages of attachments.

<sup>94</sup> Jud. Not. Apdx 208.

<sup>95</sup> Jud. Not. Apdx 208.

<sup>96</sup> Exc. 2.

<sup>97</sup> Exc. 3.

<sup>98</sup> Exc. 5.

<sup>99</sup> Exc. 6.

<sup>100</sup> Exc. 8.

<sup>101</sup> Exc. 9.

<sup>102</sup> Exc. 11.

PsychRights and a hearing set for the forced drugging petition the next day, April 30, 2008.<sup>103</sup> That same day, August 29, 2008, PsychRights filed a limited entry of appearance, limited to any forced drugging under AS 47.30.838 or AS 47.30.839 and materials submitted in 3AN 08-247PR regarding representation and in opposition to the forced drugging petition.<sup>104</sup> A hearing on the involuntary commitment petition was held August 29, 2008,<sup>105</sup> Master McBurney refused PsychRights' Limited Entry of Appearance at that time, deciding that if the commitment was granted, PsychRights' Limited Entry of Appearance would become operative.<sup>106</sup>

On May 2, 2008, Master McBurney issued the Master's recommendations, which were approved by the Superior Court on May 5, 2008, and distributed on May 7, 2008, but not to PsychRights.<sup>107</sup>

In the late afternoon on Friday, May 9, 2008, the Superior Court set the following Monday, May 12, 2008, as the time to hear the forced drugging petition.<sup>108</sup>

Respondent's counsel orally<sup>109</sup> (1) objected to proceeding with the hearing on such short notice because he was not prepared to go forward at that time,<sup>110</sup> and under *Myer*

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<sup>103</sup> Exc. 16.

<sup>104</sup> Exc. 17.

<sup>105</sup> Exc. 118

<sup>106</sup> Ex. 117.

<sup>107</sup> Exc. 119.

<sup>108</sup> Exc. 127.

<sup>109</sup> Appellant's counsel was away when API's Motion to Set Expedited Hearing on Capacity to Give Informed Consent was filed and the order setting the hearing issued, arriving back in town at 1:00 am on the morning of the hearing. Tr. 3 (May 12, 2008).

<sup>110</sup> Tr. 13 (May 12, 2008).

there is no reason to rush non-emergency forced drugging proceedings,<sup>111</sup> (2) objected to proceeding without notice of the alleged factual basis justifying granting the Forced Drugging Petition,<sup>112</sup> (3) requested time to conduct discovery,<sup>113</sup> (4) requested a pre-trial conference,<sup>114</sup> (5) requested the Superior Court order a settlement conference,<sup>115</sup> and (6) advised the Superior court he intends to file pre-trial motions.<sup>116</sup> The Superior Court ordered the trial to proceed with the presentation of API's case and at its conclusion, might give Appellant additional time to respond.<sup>117</sup> At the close of API's case, the trial was set to resume two-days later, on May 14, 2008.<sup>118</sup>

On May 13, Appellant filed written testimony of Robert Whitaker, Ronald Bassman PhD, Paul Cornils, Loren R. Mosher, MD, and Sarah Porter, all of which has been resubmitted herein.<sup>119</sup>

On May 14, 2008, at the continued hearing, Grace E. Jackson, MD, testified telephonically on behalf of Appellant,<sup>120</sup> including the submission of a written report,<sup>121</sup>

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<sup>111</sup> Tr. 14, 15 (May 12, 2008).

<sup>112</sup> Tr. 6 (May 12, 2008).

<sup>113</sup> Tr. 9 (May 12, 2008).

<sup>114</sup> Tr. 9 (May 12, 2008).

<sup>115</sup> Tr. 9 (May 12, 2008).

<sup>116</sup> Tr. 9 (May 12, 2008).

<sup>117</sup> Tr. 12 (May 12, 2008).

<sup>118</sup> Tr. 101 (May 12, 2008).

<sup>119</sup> Exc. 128-177.

<sup>120</sup> Tr. 107 (May 14, 2008)

<sup>121</sup> Exc. 189. This written and oral testimony has also been submitted herein.

API declined to cross-examine Ronald Bassman, PhD and Robert Whitaker,<sup>122</sup> and Dr. Hopson, API's Medical Director was called by Appellant.<sup>123</sup>

On May 15, 2008, Dr. Hopson's testimony concluded,<sup>124</sup> and Paul Cornils was called for cross-examination on his written testimony.<sup>125</sup>

Robert Whitaker, who Appellant presented as an expert on the analysis of clinical studies,<sup>126</sup> submitted an extensive analysis of the scientific research regarding the class of drugs commonly forced on people, the neuroleptics, also called antipsychotics,<sup>127</sup> which he summarized as follows:

- a) Antipsychotics increase the likelihood that a person will become chronically ill.
- b) Long-term recovery rates are much higher for unmedicated patients than for those who are maintained on antipsychotic drugs.
- c) Antipsychotics cause a host of debilitating physical, emotional and cognitive side effects, and lead to early death.
- d) The new “atypical” antipsychotics are not better than the old ones in terms of their safety and tolerability, and quality of life may even be worse on the new drugs than on the old ones.<sup>128</sup>

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<sup>122</sup> Tr. 168 & 171, respectively (May 14, 2008).

<sup>123</sup> Tr. 172 (May 14, 2008).

<sup>124</sup> Tr. 237 (May 15, 2008).

<sup>125</sup> Tr. 238 May 15, 2008).

<sup>126</sup> Exc. 140, Tr. 169 (May 14, 2008). Since Mr. Whitaker's direct testimony was in writing and he was not cross-examined, no formal qualification as an expert occurred, the Superior Court letting his written testimony speak for itself. Tr. 169-171 (May 14, 2008).

<sup>127</sup> Exc. 140-153.

<sup>128</sup> Exc. 152-153.

Dr. Jackson was qualified as an expert in psychiatry and psychopharmacology.<sup>129</sup>

With respect to Mr. Whitaker's written testimony, Dr. Jackson testified, it is a "very accurate and very clear presentation of the information as I understand it myself."<sup>130</sup> Dr. Jackson also had prepared a written report, which was admitted into evidence.<sup>131</sup> Dr. Jackson's testimony, including the written report, describes the ineffectiveness and extreme harm caused by the neuroleptics, including Risperdal (chemical name risperidone), confirming Mr. Whitaker's analysis with greater specificity as to the effects in the brain and body.<sup>132</sup> Dr. Jackson testified that due to the way the published information is influenced by the pharmaceutical companies, it would be almost impossible for a psychiatrist in clinical practice to find out, and most don't know, the truth about the neuroleptics;<sup>133</sup> the psychiatric drugs forced on Appellant over the decades had inflicted upon Appellant what she called "Chemical Brain Injury;"<sup>134</sup> they cause dementia of which Appellant is an example;<sup>135</sup> the drugs' primary effect is inhibiting so much brain activity that they stop annoying behavior;<sup>136</sup> they are actually chemical lobotomizers;<sup>137</sup> there is a high likelihood Appellant will die in the next five years if he is

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<sup>129</sup> Tr. 111 (May 14, 2008), Exc. 178-188.

<sup>130</sup> Tr. 112 (May 14, 2008).

<sup>131</sup> Exc. 189.

<sup>132</sup> Tr. 133, *et seq.* (May 14, 2008) & Exc. 189-199.

<sup>133</sup> Tr. 132-133 (May 14, 2008).

<sup>134</sup> Tr. 135 (May 14, 2008).

<sup>135</sup> Tr. 135 (May 14, 2008).

<sup>136</sup> Tr. 141 (May 14, 2008).

<sup>137</sup> Tr. 141 (May 14, 2008).

placed on risperidone;<sup>138</sup> the neuroleptics, including Risperdal, among other serious problems, are associated with cognitive and behavioral decline,<sup>139</sup> increase the risk for strokes and heart attacks, leg clots and pulmonary edema;<sup>140</sup> based on Appellant's long term drugging history he should have Tardive Dyskinesia;<sup>141</sup> Risperdal can cause psychosis when it is administered<sup>142</sup> as well as when it is withdrawn;<sup>143</sup> because of the severe psychiatric side effects from withdrawal, people should be allowed a lengthy time off the drugs to determine how much they can improve,<sup>144</sup> and concluding by testifying "it would be very unwise [to administer Risperdal] for a lot of reasons."<sup>145</sup>

Dr. Loren Mosher's testimony from the *Myers* trial in 2003 was submitted under Evidence Rule 804(b)(1).<sup>146</sup> Dr. Mosher, among other things was the former Chief for the Center for Studies of Schizophrenia at the National Institute of Mental Health<sup>147</sup> and was qualified in *Myers* as an expert psychiatrist, especially in schizophrenia.<sup>148</sup> His testimony included that Dr. Jackson "knows more about the mechanisms of action of the various psychotropic agents than anyone who is a clinician, that I'm aware of."<sup>149</sup> It also included

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<sup>138</sup> Tr. 160 (May 14, 2008).

<sup>139</sup> Tr. 136 (May 14, 2008).

<sup>140</sup> Tr. 139 (May 14, 2008).

<sup>141</sup> Tr. 160 (May 14, 2008).

<sup>142</sup> Tr. 144 (May 14, 2008).

<sup>143</sup> Tr. 145 (May 14, 2008).

<sup>144</sup> Tr. 147-148 (May 14, 2008).

<sup>145</sup> Tr. 151 (May 14, 2008).

<sup>146</sup> Exc. 154.

<sup>147</sup> Exc. 155-156.

<sup>148</sup> Exc. 162.

<sup>149</sup> Exc. 164.

that neuroleptics are not the only viable treatment,<sup>150</sup> continuing:

[they] will reduce the so-called positive symptoms, the symptoms that are expressed outwardly for those kinds of folks. And that way they may seem better, but in the long run, the drugs have so many problems, that in my view, if you have to use them, you should use them in as small a dose for as short a period of time as possible. And if you can supply some other form of social environmental treatment -- family therapy, psychotherapy, and a bunch of other things, then you can probably get along without using them at all, or if at all, for a very brief period of time.<sup>151</sup>

Dr. Mosher's testimony also included that as a therapeutic matter, "Involuntary treatment should be difficult to implement and used only in the direst of circumstances,"<sup>152</sup> because once a psychiatrist resorts to force, "it becomes nearly impossible to change . . . into . . . the traditional role of the physician as a healer advocate for his or her patient."<sup>153</sup>

Paul Cornils, who had extensive experience working with Appellant in the community,<sup>154</sup> testified Appellant would receive medication at API and immediately discontinue it when released; Appellant doesn't like the medication; that, other than the sedative effects, he did not observe any changes in Appellant's behavior on or off the drugs; Appellant's delusions are as strong, his anger and aggression is still present, but he just does not express them as strongly, he is less disturbing most of the time on the drugs

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<sup>150</sup> Exc. 162.

<sup>151</sup> Exc. 162-163.

<sup>152</sup> Exc. 156-154, 163.

<sup>153</sup> Exc. 163.

<sup>154</sup> Exc. 129, Tr. 242 (May 15, 2008).

and his behavior is more socially acceptable,<sup>155</sup> and because he does not like and will quit taking the medication, API's plan is not beneficial to Appellant and futile.<sup>156</sup>

Dr. Jackson, Dr. Bassman, and Mr. Whitaker testified that based on the scientific evidence they cited, non-drug approaches are far more successful than psychiatric drugs,<sup>157</sup> with Dr. Jackson testifying Appellant's proposed plan for a less intrusive alternative "looked like a very solid and a very reasonable proposal."<sup>158</sup>

Dr. Mosher testified, "without adequate housing, mental health 'treatment' is mostly a waste of time and money,"<sup>159</sup> and "if some other form of social environmental treatment - family therapy, psychotherapy, and a bunch of other things [are provided], then you can probably get along without using [psychiatric drugs] at all, or if at all, for a very brief period of time."<sup>160</sup>

Sarah Porter, whose testimony in 3AN 07-1064PR was admitted under Evidence Rule 804(b)(1)<sup>161</sup> and was qualified therein as an expert in alternative treatments,<sup>162</sup> testified to the great success of the non-coercive program she established,<sup>163</sup> saying, among other things "there is growing recognition that medication is not a satisfactory answer for a significant proportion of the people who experience mental distress and that for some

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<sup>155</sup> Tr. 241-242 (May 15, 2008).

<sup>156</sup> Tr. 243 (May 15, 2008).

<sup>157</sup> Exc.189-207, Tr. 107-165, Exc. 135-139; and Exc. 140-153, respectively.

<sup>158</sup> Tr. 150 (May 14, 2008).

<sup>159</sup> Exc. 157.

<sup>160</sup> Exc. 163.

<sup>161</sup> Exc. 154.

<sup>162</sup> Exc. 174.

<sup>163</sup> Exc. 170-176.

people it creates more problems than solutions;"<sup>164</sup> and the alternative approach has been successful with people who had been on medication for a long time.<sup>165</sup>

Paul Cornils, testified to his extensive experience working with Appellant in the community;<sup>166</sup> that Appellant could function in the community without psychiatric medication if he was given the appropriate support,<sup>167</sup> which is primarily housing<sup>168</sup> and having someone with him for an extended period of time during the day to help him meet his needs and stay out of trouble;<sup>169</sup> that quite frequently he was called to intercede when Appellant was having conflicts with his public guardian or other individuals who he perceived as wanting him to take those medications and limit his rights;<sup>170</sup> that that makes Appellant very angry, resulting in disturbing behavior and these problems would be mitigated if he was allowed to choose not to take the medications;<sup>171</sup> that because of Appellant's extreme difficulty in retaining housing, including that the Brother Francis homeless shelter is not available to him, he should be allowed to sleep at API when or if he chooses to do so;<sup>172</sup> and if he is brought to API involuntarily, he should be let out on pass for at least four hours a day with escort by staff members who like him, or some other

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<sup>164</sup> Exc. 177.

<sup>165</sup> Exc. 170.

<sup>166</sup> Exc. 129, Tr. 240-261 (May 15, 2008).

<sup>167</sup> Tr. 240-261 (May 15, 2008)..

<sup>168</sup> Exc. 132, Tr. 240, *et seq.* (May 15, 2008).

<sup>169</sup> Exc. 133, Tr. 240, *et seq.* (May 15, 2008).

<sup>170</sup> Tr. 246 (May 15, 2008).

<sup>171</sup> Tr. 246 (May 15, 2008).

<sup>172</sup> Exc. 132.

party willing and able to do so.<sup>173</sup>

During closing statement/oral argument held after the close of evidence on May 15, 2008, Respondent prophylactically moved the Court for a stay pending appeal because he knew API would immediately start drugging him against his will without such a stay.<sup>174</sup>

On May 19, 2008, the Superior Court granted the forced drugging petition, but gave Respondent 48 hours to obtain a stay from the Alaska Supreme Court.<sup>175</sup>

Respondent was discharged on June 4, 2008.<sup>176</sup>

**S-13116** Respondent filed an appeal from the Superior Court's May 19, 2008, Decision the next day, May 20, 2008, along with an Emergency Motion for Stay Pending Appeal, which was updated the next day with transcript citations, which had been unavailable at the time the original Emergency Motion for Stay Pending Appeal was filed.<sup>177</sup> API opposed the stay,<sup>178</sup> and a single justice of the Alaska Supreme Court granted the stay, *inter alia*, on the grounds that Respondent had made a sufficient showing that he faced the danger of irreparable harm from a single additional dose of Risperdal Consta which API wanted to administer against Respondent's wishes.<sup>179</sup> API filed a motion for full court reconsideration, among other things, on the ground that the stay "effectively

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<sup>173</sup> Exc. 132.

<sup>174</sup> Appendix 197.

<sup>175</sup> Exhibit 6, page 5 to API's November 7, 2007, Objections to proposed testimony.

<sup>176</sup> Appendix 265.

<sup>177</sup> Appendix 205.

<sup>178</sup> Appendix 216.

<sup>179</sup> Appendix 226.

precludes API from administering medication for Mr. Bigley during this, or any future, commitment periods."<sup>180</sup>

The Supreme Court denied reconsideration,<sup>181</sup> but presumably because of this expressed concern by API that it couldn't drug Respondent against his will during the pendency of the appeal, ordered the parties to briefly address whether the appeal should be expedited.<sup>182</sup> Respondent responded that the appeal should be expedited, not because of the stay, but because the less intrusive alternative he was requesting was needed right away:

Appellant has been locked up in the Alaska Psychiatric Institute (API) 75 times. In addition, mostly as a result of expressing his extreme anger at the way he has been treated, he has been arrested multiple times for minor offenses not involving violence, including since his discharge from his most recent commitment. The unanimous testimony in this case is that if Appellant were to have someone with him in the community and provided dependable housing, he could probably avoid being readmitted to API or landing back in jail. Unfortunately, API refuses to provide such a less intrusive alternative. Instead, when it has been prevented from drugging Appellant against his will, including in this case, it has discharged him even though it has just come into court and obtained involuntary commitment orders upon the sworn testimony of its employees that he is gravely disabled and/or a danger to himself.<sup>183</sup>

API did not file anything in response to the order by the Alaska Supreme Court to address whether the appeal should be expedited,<sup>184</sup> and the Supreme Court granted

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<sup>180</sup> Appendix 232.

<sup>181</sup> Appendix 272

<sup>182</sup> Appendix 273.

<sup>183</sup> Appendix 279-280.

<sup>184</sup> However the Office of Public Advocacy, his guardian, did, taking the position there was no need to expedite the appeal because Respondent had been discharged. Appendix 281.

expedited consideration on July 14, 2008.<sup>185</sup> Briefing is now complete and oral argument scheduled for December 16, 2008 at 10:15.

**3AN 08-6820CR**. Respondent was arrested June 23, 2008 for disorderly conduct-loud noise and criminal mischief, was ordered to API for psychiatric examination on June 24, 2008, the charges dismissed July 2, 2008 for incompetence to stand trial,<sup>186</sup> and Respondent discharged June 30/July 1, 2008.<sup>187</sup>

**3AN 08-8290CR** On July 23, 2008, Respondent was arrested for trespass on business property and disorderly conduct-loud noise.<sup>188</sup> On July 31, 2008, the Court found Respondent incompetent to stand trial and ordered him transferred to API for evaluation and treatment for possible restoration to competency to stand trial. He was admitted to API on August 1, 2008, and discharged on August 5, 2008 when the Municipality dismissed the charges.<sup>189</sup>

**August 7, 2008, Guardianship Review Petition Proceeding; 3AN 04-545P/G.**

The day before the August 7, 2008, hearing on the Review Petition, Respondent filed essentially the same written testimony filed here(1) in support of his Summary Judgment motion and (2) as direct testimony and because the guardian had proven unable to fulfill its obligations, requested,

A. the guardianship/conservatorship terminated, or

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<sup>185</sup> Appendix 282.

<sup>186</sup> Appendix 271.

<sup>187</sup> Appendix 274.

<sup>188</sup> CourtView.

<sup>189</sup> Appendix 284, 285.

B. in the alternative, the Guardian should be ordered to properly discharge its duties, with monthly reports to this Court thereon. This order should include that:

1. OPA obtain housing in the community for Respondent, which will remain available to him, and that will allow Respondent a reasonable amount of discretionary income from his funds, which shall not be less than \$1,000 per month.
2. OPA procure the services in the community for people to be with Respondent for extended periods of time to listen to him, assist, as necessary to meet his needs, and keep him out of trouble.<sup>190</sup>

At the conclusion of the hearing, Master Duggan would not consider this, finding there is no reason to terminate the appointment based on financial matters, or to change the order based on the specific request in the Petition for Review.<sup>191</sup>

**3AN 08981CR** Respondent was arrested on August 9, 2008, for trespass, and the charges dismissed August 20, 2008 on the grounds he was incompetent to stand trial.<sup>192</sup>

**3AN 08-1148PR**. Respondent was admitted to API on September 22, 2008 on an *Ex Parte* Petition on the grounds Respondent was homeless and can not identify where to get safe food or housing,<sup>193</sup> an order for olanzapine (Zyprexa) written,<sup>194</sup> Respondent refused the Zyprexa,<sup>195</sup> and he was discharged on September 24, 2008,<sup>196</sup> with API and his

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<sup>190</sup> Appendix 299.

<sup>191</sup> Appendix 310. Mediation has since been initiated. Appendix 342.

<sup>192</sup> Appendix 313, 314.

<sup>193</sup> Appendix 315.

<sup>194</sup> Appendix 318.

<sup>195</sup> Appendix 320.

<sup>196</sup> Appendix 322.

guardian agreeing Respondent had to go to API to get his spending money,<sup>197</sup> but not knowing how Respondent would obtain food.<sup>198</sup>

**September 30, 2008, to October 1, 2008; 3AN 08-1176PR.** Respondent was admitted to API on September 30, 2008 on an *Ex Parte* Petition,<sup>199</sup> and discharged on October 1, 2008 "Against Medical Advice" because he was not taking drugs.<sup>200</sup>

**October 7, 2008 to October 8, 2008; Providence Psychiatric Emergency Room.** Respondent was taken to the Providence Psychiatric Emergency Room (Psych ER) by the Anchorage Police Department. It was reported he was yelling at traffic and jumping in and out of traffic, almost being hit by a car.<sup>201</sup> Respondent voluntarily took medication and he was sent to API to "attempt for admission." The treating physician noted that because Respondent is chronically noncompliant with medication, "the health care community may not have any options to treat the patient."<sup>202</sup>

**October 8, 2008 to October 8, 2008; Voluntary API Admission.** Respondent was admitted to API voluntarily from the Psych ER on October 8, 2008,<sup>203</sup> was cooperative with staff and had no behavior problems,<sup>204</sup> and then discharged the same day

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<sup>197</sup> Appendix 320.

<sup>198</sup> Appendix 321.

<sup>199</sup> Appendix 325-327.

<sup>200</sup> Appendix 330.

<sup>201</sup> Appendix 333 and 334.

<sup>202</sup> Appendix 334.

<sup>203</sup> Appendix 339.

<sup>204</sup> Appendix 340.

"Against Medical Advice" because Respondent they couldn't drug Respondent against his will.<sup>205</sup>

**October 20, 2008 to Date, 3AN 08-1252PR.** The current admission and this legal proceeding was commenced October 20, 2008.

DATED: November 9, 2008.

Law Project for Psychiatric Rights

By:   
\_\_\_\_\_  
James B. Gottstein  
ABA # 7811100

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<sup>205</sup> Appendix 337.